

EEO Complaints: What to Consider Before You File

When discrimination is **based on your membership in a protected category** regarding an **employment matter**, it is against the law!

Office of Workforce Engagement

WHAT is Employment Discrimination?

Employment discrimination happens when an employer treats an employee or job applicant unfairly or less favorably because they belong to a **protected class or category (basis)**. This unfair treatment can occur in many areas of **employment**.

Theories of Discrimination:

Disparate Impact: Unintentional discrimination that occurs when a policy or practice appears to be neutral, but disproportionately affects a particular group of people, based on their protected category and often leads to unequal outcomes.

Disparate Treatment: Intentional discrimination against individuals based on their protected class, resulting in unequal treatment as compared to other.

Protected Categories (Bases)

- **Race**
- **Color**
- **National Origin** (Hispanic, German, etc.)
- **Religion**
- **Sex** (including pregnancy, sexual harassment, orientation, gender identity or expression)
- **Age** (40 and older)
- **Disability**
- **Genetic Information**
- **Veteran Status**
- **Political Affiliation**
- **Retaliation** (filing a complaint, complaining to employer, participation in investigation)

WHY Do You Think You Were Treated Unfairly or Less Favorably?

When evaluating whether something is **discrimination**, ask yourself:

- Was the action taken against me because of **my protected status**?

For example: "Did this happen only because of my race, gender, age, disability, or another protected category?"

Think about **two pieces**:

- **The issue** – the specific employment action (such as being denied a promotion, disciplined, or terminated).
- **The basis** – whether that action was tied to your membership in a protected group (like race, religion, gender, age, etc.).

HOW is it affecting me (adverse employment action)?

An **adverse employment action** is any **negative** decision or treatment by an employer that affects the **terms, conditions, or opportunities of your job**.

To determine if what happened to you counts as an adverse action, **ask yourself**: Is the problem related to **one of these areas of employment**?

- Hiring and/or promotion
- Pay (unequal wages and compensation)
- Reasonable Accommodation
- Discharge, Termination or Layoff
- Retaliation
- Job Training
- Benefits
- Disclosing Medical Information
- Hostile Work Environment

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WHEN did the incident Occur?

The time limit for filing a complaint of discrimination is **180 calendar days** from the **last** act of discrimination.

WHO is involved?

YOU are, if you are:

- 1) A **current** Commonwealth of Virginia **employee**
- 2) A **former** Commonwealth of Virginia **employee**
- 3) An **applicant** for employment in the Commonwealth of Virginia

Who was responsible for the action (or inaction) that caused the problem?

This could be:

- **A supervisor or manager** (e.g., who denied a promotion or failed to stop harassment).
- **A coworker** (e.g., who engaged in discriminatory behavior).
- **The organization or HR** (e.g., when policies weren't followed, or no response was given to a complaint).

FINALLY....

Now that you have considered all the facts and information, ask yourself:

If it were not for my **protected category(ies)** would this action have been taken? If **no**, the issue **does not** meet EEO complaint criteria. If **yes**, you **may** have an EEO claim.

OWE CAN HELP!

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Burden of Proof in the EEO Complaints

Who has to prove discrimination occurred?

In discrimination cases, **the employee (the complainant)** is responsible for proving that discrimination occurred. This is called **the burden of proof**. However there is a three-step process to decide whether discrimination took place:

Step 1 – Employee establishes a **prima facie case (initial showing)**. The employee must show three things:

- They belong to a **protected class** (such as race, gender, age, religion, or disability).
- They experienced an **adverse employment action** (such as being fired, denied a promotion, or paid less).
- A similarly qualified person outside their protected class was treated **more favorably** in the same or similar situation.

Step 2 – Employer provides a **legitimate reason**. The employer must explain a **valid, non-discriminatory reason for their decision or action**.

Step 3 – Employee proves **pretext (hidden discrimination)**. The employee then has the chance to show that the employer's stated reason is **not the real reason**, but rather a pretext (an excuse to cover up discrimination).